

COPY

AMENDMENT OF
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WATERWAY COVE
COVE (FORMERLY KNOWN AS BARCELONA SUBDIVISION)

THIS DECLARATION, made on the date hereinafter set forth by Southam Mortgage Company.

WITNESSETH

WHEREAS, The undersigned are owners of all of the lots in Barcelona Subdivision in the Little River Township, County of Horry, State of South Carolina, with the exception of those Lots listed below, which property is more particularly described as:

All those certain pieces, parcels or tracts of land shown and designated on the "Map of 41 lots in Barcelona Subdivision" dated 06-27-89 by Coastline Surveying recorded in Plat Book 119 at page 138 in the office of the RMC for Horry County on April 27, 1992.

SAVING AND EXCEPTING THEREFROM, those certain pieces, parcels and tracts of land shown and designated on the aforesaid plat as Lots 14 and 15, Block C, Barcelona Subdivision.

Being the same property conveyed to the undersigned by deed of the Honorable John L. Breeden, Jr., as Master in Equity for Horry County, dated September 3, 1991 and recorded in Deed Book 1492 at Page 276 in the office of the RMC for Horry County on September 5, 1991.

WHEREAS, the undersigned is desirous of amending the Declaration of Covenants, Conditions and Restrictions to change the name of Subdivision, as well amending said Restriction to allow changes to be made to Restrictions for the betterment and

improvement thereof;

WHEREAS, the present owner of those certain lots 6, 7, 8, 16, and 18 are hereby entering into said Amendment to consent to said name change and to those other changes being made to said Restrictions.

NOW THEREFORE, the undersigned hereby declares that the lots described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof as amended.

ARTICLE I

DEFINITIONS

Section 1 "Association" shall mean and refer to Waterway Cove Homeowner's Association, it's successors and assigns.

Section 2 "Owner" shall mean and refer to the record owner, whether one or more persons are entitled, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3 "Properties" shall mean and refer to the Lots described above and such additional lots as may hereafter be brought within the jurisdiction of the Association.

Section 4 "Common Area" shall mean all real property (including) the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 5 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area;

Section 6 "Member" shall mean and refer to those persons entitled to membership in the Association as provided by this Declaration.

ARTICLE II

PROPERTY RIGHTS

Section 1 Owner's Easements of Enjoyment: Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreations facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the members.

No such dedications or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rd or each class of members has been recorded.

Section 2 Declarant of Use: Any Owner may delegate, in accordance with the By-laws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on the property. Provided, however, the use by guests may be regulated by the Board of Directors.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1 Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separate from ownership of any lot which is subject to assessment.

Section 2 The Association shall have two classes of voting membership:

Class A Class A members shall be all Owners, with the exception of the undersigned, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B The Class B member(s) shall be the undersigned and shall be entitled to three (3) votes for each Lot owned. The

Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier;

(a) when the total outstanding in the Class A membership equal to the total votes outstanding in the Class B membership, or

(b) December 31, 1998.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 Creator of the Lien and Personal Obligation of

Assessments: The undersigned, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments for capital improvements, such assessments to be established and collected as hereafter provided.

Each Owner shall have the obligation to maintain and keep in good repair the improvements on his lot, including the exterior walls of the dwelling house thereon, and any other exterior surfaces. If any Owner shall fail to comply with the provisions of this sub-section, and in the opinion of the Architectural Control Committee of the Association such failure impairs the aesthetic harmony of the Waterway Cove (formally known as Barcelona Subdivision), the Association may make demand upon such Owner to

comply. In the event such Owner shall, after written notice has been given, fail to take necessary steps to comply, the association may proceed to remedy such Owner's default. Any expenses incurred by the Association for such purposes, including labor, materials and professional fees shall become a lien upon the Lot of such Owner, collectable as otherwise provided for herein; the Owner shall also be personally obligated for the expense incurred. Amounts incurred in the foregoing manner shall be deemed "Direct assessments", and shall be in addition to any other assessments herein provided for and shall be due immediately upon demand, provided further, the Association shall have the right to enter any unit to make emergency repairs.

The annual, special and direct assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2 Purpose of Assessment:

(a) The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area. Provided, further, that assessments shall be used to maintain and repair paved streets, the amenities, for management and supervision, to procure and maintain

policies of insurance in accordance with the By-Laws, the employment of the attorneys to represent the Association when necessary. The provisions of adequate reserves for the replacement of capital improvements; and for such other needs which may arise.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid unto the Association by any Lot Owner, the same may be co-mingled with monies paid to the Association by the other Lot Owners. Although, all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner ceases to be member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and

management of the Properties.

Section 3 Maximum Annual Assessment: Until January 1 of the following year immediately following the recording of this Declaration, the maximum annual assessment shall be One Hundred Twenty Five Dollars (\$125.00) per Lot.

(a) From and after January 1 of the year immediately following the recording of this Declaration, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the recording of this Declaration, the maximum annual assessment may be increased above twenty percent (20%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4 Special assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the members who are voting in person or by proxy at a meeting duly called for this

purpose.

Section 5 Notice and Quorum for any Action Authorized Under

Section 2 and 4: Written notice of any meeting called for the purpose of taking any action authorized under Section 2 and 4 shall be sent to all members not less than 15 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6 Uniform Rate of Assessment Both annual and Special assessments must be affixed at a uniform rate for all Lots and may be collected on a monthly basis, quarterly, or annual basis.

Section 7 Date of Commencement of Annual Assessments: Due Dates:

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due

dates shall be established by the Board of Directors. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a lot is binding upon the Association as of the date of its issuance. Notwithstanding anything contained in this provision, the undersigned shall not be charged annual assessments on Lots owned by it herein until ninety(90%) percent of the Lots have been sold.

Assessments shall be due after sale of each Lot from the Purchaser thereof.

Section 8 Effect of NonPayment of Assessments: Remedies of the Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of South Carolina for the foreclosure of Mortgages, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change, including paint color, landscaping and fencing, or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of 2-5 member representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with.

The Architectural Control Committee shall regulate the external design, appearance, use, location and maintenance of the Properties and of improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings on any other improvements erected thereon. The costs of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI

USE RESTRICTIONS

Section 1 Land Use and Building Type: No Lot shall be used except for single-family residential purposes and such use shall be limited to:

- (a) The Owner;
- (b) Members of the Owner's immediate family or members of the immediate family of the Owner's spouse. For purposes of this Declaration "immediate family" shall mean lineal ancestors or descendants of the Owner or the Owner's spouse;
- (c) A Tenant of an Owner;

(d) Guests of Tenant or of Owner's immediate family;

(e) Such other occupancies as may be approved from time to time by the Board of Directors upon prior written application therefore by the Owner. Such application shall set forth the type, nature and duration of the proposed occupancy arrangement, the name and relationship of the proposed occupant and such other pertinent information as the Board may require;

(f) Use of a Lot or Lots by undersigned as sales offices and/or models.

Section 2 Nuisance: No obnoxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3 Animals: No animals, livestock or poultry of any kinds shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with all laws and ordinances of the County of Horry relating thereto.

Section 4 Outside Antennas: No outside radio, television antennas or satellite dishes shall be erected on any Lot or dwelling within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee.

Section 5 Trees: Without the prior approval of the undersigned and the Association, no Lot Owner or any guest, tenant, agent, contractor,

or employee of any Lot owner shall cut or injure any tree or any Lot having a trunk diameter of four (4") inches or more measured at a point six (6") inches above ground level.

Section 6 Mail and/or Newspaper Recepticals: The subdivision has a central mailbox location and therefore prohibits and restricts the placement of mailboxes or newspaper recepticals on the property or the exterior part of the structure.

Section 7 Parking Areas: Parking of vehicles on street is prohibited. Parking of vehicles is limited to the garage or concrete driveways. No parking in the front or side yard is permitted. No campers, recreational vehicles, boats, or trailers shall be stored on the property, unless completely parked in the garage.

Section 8 Landscaping: All landscaping designs must be submitted to the Architectural Control Committee for approval. This shall include any and all plants and materials, including their shape, size and type. any additions or alterations to the original design must also be submitted and approved.

ARTICLE VII

EASEMENTS

Section 1 Easements: An Easement is hereby granted to Horry County and Little River Sewerage and Water Company over all streets and all other areas where reasonably necessary for the following purposes:

(a) To install, service, repair, replace, maintain and read water meters.

(b) an easement having a five (5) foot radius around each fire hydrant is specifically reserved to the Horry County (Fire Department) for the purpose of going on the land and testing the fire hydrant. The Horry County (Fire Department) shall not be liable for any damage done within the above set out radius, or any other damages caused by the above set out testing.

(c) For the fighting of fires.

(d) For affording police protection.

(e) For the collection of garbage.

(f) All easements set out on the recorded plat.

Section 2 Owner's Easements: Each owner of each Lot within the properties hereinbefore described shall be, and by this declaration is, granted an easement for vehicular and pedestrian traffic over all streets shown upon the recorded plat of the subdivision. Such easement shall be subject to such reasonable rules and regulations as shall be subject promulgated by the Association for the safety and convenience of the Owners, and the rights of the Association to maintain all parts of any street which any street shall encroach and the Owner thereof is charged with the easements and right-of-way of all individual Owners granted above and those of the Association.

Section 3 Utilities Easements: Easements for the installation of utilities, including but not limited to, water lines, sewer lines, telephone lines and equipment, electrical power lines and equipment, and cable vision lines and equipment are hereby granted, as shown upon the recorded plat.

ARTICLE VIII

GENERAL PROVISION

Section 1 Enforcement: The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, imposed by the provisions of this Declaration.

Failure of the association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2 Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4 Areas and Their Appurtenances To Be Maintained by the Association and Not by Horry County: All Common Areas and their appurtenances hereinafter set out, but not limited to, shall be maintained by the Association to wit:

- (a) Streets;
- (b) Drainage System;
- (c) Dumpsters.

IN WITNESS WHEREOF, the under signed, herein, have hereunto set their hands and seals this the 7 day of Oct, 1996.

WITNESSES:

Dori Conway
Stephy Webb

SOUTHAM MORTGAGE COMPANY,

By: R. H. E. Heape
Its: President

Clifford A. Salkunas
Notary Public

AGREED TO:
By: Stephen R. Heape
Stephen R. Heape

STATE OF CONN.
COUNTY OF Newtown

WATERBURY, CONNECTICUT
ACKNOWLEDGEMENT
(under S.C. Code Sect. 30-5-30 (C))

I, Clifford A. Salkunas, a notary public for CONN. Carolina do hereby certify that Southam Mortgage Company personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this 7 day of Oct, 1996.

Clifford A. Salkunas
Notary Public for South Carolina Conn.
My commission expires: 9-11-2000

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT
(under S.C. Code Sect. 30-5-30 (C))

I, George T. Sanchez III, a notary public for South Carolina, do hereby certify that Stephen R. Heape personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this 12th day of July, 1996.

George T. Sanchez III
Notary Public for South Carolina
My commission expires: 8/10/03

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